REMARKS

STATUS OF CLAIMS

Claims 30-35, 37-39, 43-45, and 47-60 were pending in the application. Claim 30 has been amended, new claim 61 has been added and no claims have been cancelled. Therefore, claims 30-35, 37-39, 43-45, and 47-61 are pending and are submitted for reconsideration.

PRIOR ART REJECTION UNDER 35 USC § 103

In the final office action, claims 30-35, 37-39, 43-45, and 47-56 were rejected under 35 USC § 103 as being obvious over U.S. Patent Number 6,044,396 to Adams (hereafter "Adams") in view of U.S. Patent Number 5,996,015 to Day *et al.* (hereafter "Day"). Claim 57 is rejected under 35 USC § 103 over Adams and Day in further view of U.S. Patent Number 6,215,904 ("Lavallee"). Claims 59-60 are rejected under 35 USC § 103 over Adams and Day in further view of U.S. Patent Number 6,243,388 ("Mussman"). Applicants respectfully traverse these rejections with respect to the pending claims for at least the following reasons.

Independent claim 1 recites a method for allocating bandwith for transmitting video on a cable network in which , *inter alia*, identifying compression parameters and degrading image quality is done based on (1) a function of the types of data wherein the types of data are determined from the *content* of data received from the respective plurality of data sources, and (2) a function of the client capabilities. At least this recited feature is not disclosed by the applied prior art.

Specifically, as acknowledged in the final office action, Adams does not disclose differentially converting the data to a desired depth of compression and for degrading

image quality based on a function of the types of data to be displayed and a function of client capabilities. See first full paragraph on page 5 of the final office action.

To cure this deficiency in Adams, the office action relies on Day. However, nowhere does Day disclose that identifying compression parameters and degrading image quality is done based on (1) a function of the types of data wherein the types of data are determined from the *content* of data received from the respective plurality of data sources in addition to (2) a function of client capabilities. As noted by the examiner, the cited portion of Day encodes video files having the same "operating characteristics" to be compatible with or match the communication link. See col. 6, lines 15-25 of Day. However, as clearly disclosed by Day, these various operating characteristics relate to the various formats of the video and have nothing to do with the *content* of the video data. See col. 5, lines 60-64. Accordingly, the only processing taught by Day relates to ensuring a seamless data stream in which all the data sources are converted to a same operating characteristic (or same format). This disclosure is clearly very different from the claimed identifying of compression parameters and degrading of image quality is done based on (1) a function of the types of data wherein the types of data are determined from the *content* of data received from the respective plurality of data sources.

Since this feature is not disclosed by either Adams or Day or any of the other applied references, the office action fails to make a *prima facie* case of obviousness with respect to independent claim 30.

It should be noted that the Patent Office (PTO) has the burden of proving each of the claimed features is shown by the prior art. An allegation that claimed subject matter is "obvious" (as here alleged) requires a positive, concrete teaching in the prior art, such as would lead a person skilled in the art to choose the claimed combination from among many that might be comprehended by broad prior art teachings. The PTO's review court has made it very clear that silence in a reference is hardly a substitute for clear and

concrete evidence from which a conclusion of obviousness might justifiably flow. See, e.g., *Application of Burt*, 356 F.2d 115, 121 (CCPA 1966).

Independent claim 61 is also patentable for reasons that are similar to that discussed above with respect to independent claim 30. Accordingly, this independent claim is also believed to be patentable over the applied prior art.

DEPENDENT CLAIMS

The dependent claims are deemed to be patentable at least based on their dependence from allowable independent claims. In addition, they recite patentable subject matter when considered as a whole. For example, the features recited in claims 37-39 when properly interpreted are also not disclosed or suggested by the applied prior art and these features provide additional reasons for the patentability of these claims.

CONCLUSION

Accordingly, applicant submits that the application is now in condition for allowance and an indication of the same is respectfully requested. If the Examiner believes that the application is not in condition for allowance, the Examiner is respectfully requested to call the Applicants' representative at the telephone number listed below.

If this Amendment is not considered timely filed and if a request for an extension of time is otherwise absent, Applicant hereby requests any necessary extension of time. If there is a fee occasioned by this Response, including an extension fee that is not covered by an enclosed check please charge any deficiency to Deposit Account No. 50-0463.

Respectfully submitted,
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Date: October 20, 2006

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CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

I hereby certify that this correspondence is being electronically deposited with the USPTO via EFS-Web on the date shown below:

October 20, 2006
Date


Signature

Kate Marochkina
Type or Print Name

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